

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID GLENN MORTON,

Plaintiff,

v.

BANK OF AMERICA HOME LOANS
SERVICING LP, et al.,

Defendants.

Case No. 1:16-cv-1270

HON. JANET T. NEFF

_____ /

OPINION AND ORDER

Plaintiff filed this *pro se* action alleging Defendants violated the Truth in Lending Act (TILA), engaged in unlawful foreclosure, and committed fraud. Defendants Bank of America Home Loans Servicing LP and Brian T. Moynihan, and Defendant Barbara J. Desoer, separately filed motions to dismiss (ECF Nos. 12 and 17, respectively). Plaintiff filed a motion to strike and motion for summary judgment (ECF No. 14). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that Defendants' motions to dismiss be granted based on res judicata, Plaintiff's motion be denied, and this action be terminated. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. Defendants have filed a Response (ECF No. 22). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff objects to the Magistrate Judge's determination on multiple grounds.¹ Plaintiff's first objection is to the determination that he failed to state a sufficient basis to strike Defendants' motions. Plaintiff states his dissatisfaction with the Report and Recommendation by reiterating his prior argument that Defendants have defaulted in regard to their TILA obligations (ECF No. 20 at PageID.331) and have therefore "relinquished any right to object or defend" (*id.* at PageID.332). As Defendants note, Plaintiff confuses the merits of his case with Defendants' procedural right to move for dismissal (ECF No. 22 at PageID.341). The Magistrate Judge applied the correct procedural standards for a motion to dismiss and properly concluded that Plaintiff's motion to strike should be denied. Plaintiff fails to demonstrate any error in the Magistrate Judge's analysis or conclusion.

Plaintiff next objects to the Magistrate Judge's determination that res judicata bars the present action. Plaintiff argues res judicata is not applicable because his prior claim was "dismissed without prejudice" (ECF No. 20 at PageID.332). Contrary to Plaintiff's assertion, his prior claim was not dismissed without prejudice. It was decided on the merits (ECF No. 13-6), and affirmed by the United States Court of Appeals for the Sixth Circuit (ECF No. 13-7). The Magistrate Judge properly applied the doctrine of res judicata.

Additionally, Plaintiff objects to the Magistrate Judge's determination that this action is barred by res judicata, arguing that a U.S. Supreme Court decision "has now empowered Plaintiff to raise issues not honored by the majority of federal courts prior to the *Jesinoski*^[2] ruling" (ECF No. 20 at PageID.333). Plaintiff fails to cite any portion of the *Jesinoski* opinion that would alter

¹To the extent Plaintiff challenges the Magistrate Judge's statements of underlying facts, these allegations of error are encompassed by his objections on merits.

²*Jesinoski v. Countrywide Home Loans, Inc.*, 135 S. Ct. 790 (2015).

the analysis of res judicata in this case. Plaintiff's arguments do not undermine the determination by the Magistrate Judge that his present claim is barred by res judicata.

To the extent that Plaintiff argues he has raised different issues, the Magistrate Judge properly determined res judicata bars "an issue in the subsequent action which *was* litigated or which *should have been* litigated in the prior action" (ECF No. 19 at PageID.326, emphasis added). Plaintiff's claim in the present action stems from his assertion that he cancelled his mortgage loan in December 2009 under TILA. This is the same issue adjudicated in his prior action. The Magistrate Judge properly concluded that the issues in the present action were asserted or should have been asserted in Plaintiff's prior suit.

Finally, Plaintiff objects to the Report and Recommendation on the basis of fraud. Again, Plaintiff merely restates a prior argument, failing to object to any findings of the Magistrate Judge in the Report and Recommendation. The restatement of his argument fails to alter the analysis. The Magistrate Judge's reasoning and conclusions were sound.

The Magistrate Judge properly determined the present claim is barred by the doctrine of res judicata (ECF No. 19 at PageID.327). Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Therefore:

IT IS HEREBY ORDERED that the Objection (ECF No. 20) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 19) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (ECF No. 12) is GRANTED.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (ECF No. 17) is GRANTED.

IT IS FURTHER ORDERED that "Plaintiff's Motion to Strike Defendants' Motion to Dismiss and Motion for Summary Judgment" (ECF No. 14) is DENIED.

Dated: September 22, 2017

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID GLENN MORTON,

Plaintiff,

v.

BANK OF AMERICA HOME LOANS
SERVICING LP, et al.,

Defendants.

_____ /

Case No. 1:16-cv-1270

HON. JANET T. NEFF

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that Plaintiff's complaint is DISMISSED with prejudice.

Dated: September __, 2017

JANET T. NEFF
United States District Judge